

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3922 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

YAKUBBHAI ISMAILBHAI CHHIPA

Versus

STATE OF GUJARAT

Appearance:

Mr. H.R. Prajapati for M/S THAKKAR ASSOC. for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 27-4-96 passed by the District Magistrate, Bharuch whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 29-4-96 and since then the

petitioner is under detention lodged at Porbandar Special Jail.

2. The present Special Civil Application was filed in this court on 6-6-96 and on 7-6-96 Rule returnable on 26-6-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 2 criminal cases were registered against the petitioner under the Bombay Prohibition Act for foreign liquor at Bharuch City 'A' Division Police Station. Both the matters are pending trial before the Courts at the time when the detention order was passed. After taking notice of the allegations of these two criminal cases, the detaining authority has also considered the statements of 4 witnesses, who have stated against the petitioner's anti social and bootlegging activities. The detaining authority has opined that the petitioner is a bootlegger and is engaged in anti social activities, sale of unauthorised liquor and carrying stock of unauthorized liquor. He has been threatening and beating innocent persons, using deadly weapons like sword. The detaining authority has found that it was necessary to detain the petitioner in order to prevent him from continuing with his anti social activities. Accordingly the detention order was passed.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 27-4-96 passed by the District Magistrate, Bharuch is hereby quashed and set aside and the petitioner's detention is

declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.